

THE THIRD BRANCH

Newsletter
of the
Federal
Courts

Vol. 40
Number 10
November 2008



PACER Coming Into Its Own at 20

Twenty, in many cultures, marks a young person's coming of age. In 2008, the Electronic Public Access (EPA) Program celebrates its own coming of age after two decades of expansion and service.

Back in September 1988, the Judicial Conference authorized "an experimental program of electronic access for the public to court information in one or more district, bankruptcy, or appellate courts in which the experiment can be conducted at nominal

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Judge Writes First Benchmark for Afghanistan

Books have shaped history. The book Judge Abdul Saboor Hashimi of Afghanistan is writing may help shape his country's legal system.

From May to August 2008, Judge Hashimi spent four months at the Federal Judicial Center under the auspices of its Visiting Foreign Judicial Fellows Program. He arrived with a general idea of learning more about judicial education and researching the U.S. criminal trial

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Federal Courthouses Recognized for Architectural and Design Excellence



Federal Courthouse in Alpine, Texas

The American Institute of Architects selected four federal courthouses to highlight this year in its publication, *Justice Facilities Review*. Two of the courthouses—the U.S. Courthouse in Alpine, Texas (Western District of Texas), and the Wheeling, West Virginia Federal Building and U.S. District Courthouse (Northern District of West Virginia)—also received citations for architectural and design excellence.

A jury of representatives from justice, architectural, and government sectors selected winning projects for

the *Review* that "demonstrate quality of form, functionality, and current architectural responses to complex justice design issues."

U.S. Courthouse Alpine, Texas Western District of Texas

Architect: PageSoutherlandPage
General Contractor: W.G. Yates & Sons
Construction Company, San Antonio

The architect called the U.S. courthouse in Alpine, Texas, "a very particular response to the extraordinary quality of the local landscape, the

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process. He soon decided to focus his Fellowship on a benchbook for Afghanistan judges, with guidance on how to prepare for and conduct criminal trials. It would be the first educational resource of its kind in Afghanistan.

The FJC's Visiting Foreign Judicial Fellows Program offers foreign judges, public officials, and scholars an opportunity to conduct research at the FJC for a period of one to six months. Candidates must be fluent in written and spoken English, secure independent funding, and plan a specific research project relating to the U.S. legal system, judicial practice, or court education. Since the program's inception in 1992, judges, lawyers, and court officials from South Korea, China, Uganda, Brazil, Russia, Japan, and now Afghanistan, have participated as Visiting Fellows.

Hashimi had been a primary court judge in Afghanistan for six years and he was a member of the Chamtal Court in Balkh province when he was selected for the FJC Fellowship. In the Afghan judicial system, judges are selected from the best law graduates, who then take intensive courses on the courts and law. Judicial appointments are made on recommendation of the Chief Justice and the President.

In his home country, Hashimi participated in seminars, workshops, and English language courses supported by the U.S. Agency for International Development's Rule of Law Project. He also earned several certificates from judicial education programs, including certificates for a judicial seminar on human rights from the Afghanistan Human Rights Organization, a judicial seminar on civil and criminal procedures codes, and a seminar on reformation of justice and judiciary and court management. He was one of 16 Afghan judges who passed the language tests demonstrating

fluency in English. "Then my dream came true," he said, "and I was here in Washington doing research." Hashimi is the FJC's first Visiting Fellow from Afghanistan.

The Center provides Visiting Fellows with an office, computer access, assistance with their research, and arranges meetings with U.S. judges, court staff, and others in the Judiciary community. The program is under the direction of Mira Gur-Aire, head of the FJC's International Judicial Relations Office. During his Fellowship, Hashimi attended the Center's National Sentencing Institute and its national workshop for district court judges. He also traveled to Louisiana where he observed court proceedings and visited a local law school. Throughout Hashimi's stay, many federal judges gave generously of their time and experience to explain the U.S. judicial system.

Hashimi chose to develop a benchbook for Afghan judges because, although a body of law exists, its implementation by the courts is sometimes criticized. He cited, as an example, the length of time it might take to go to trial. "What is a speedy trial?" he asked. "We don't have a guide. And every judge has his own perspective. We need an integrated way of proceeding."

With the FJC's encouragement, Hashimi modeled his benchbook on the Center's *Benchbook for U.S. District Court Judges*.

"It fills a gap in my own country where a benchbook could facilitate a system for court procedures and the penal code," he said.

The benchbook for U.S. district judges is described as "a quick, practical guide to help trial judges deal with situations they are likely to encounter on the bench." It is a manual that offers judges "immediate guidance on how to proceed."

"My aim is to make it even more comprehensive than the U.S. benchbook," said Hashimi of his project. "Now it's just criminal cases, but



Judge Abdul Saboor Hashimi

perhaps it could be expanded. With reconstruction and people returning to the country, there are a lot of disputes and the civil caseload is really high. The benchbook should be beneficial to the people and to judges."

"Judge Hashimi's planned benchbook is different in some ways from the Center's publication," said Gur-Aire. "It will have practical information on the responsibilities of new judges and reference court rules, but the role of judges is very different."

Gur-Aire points out that the Afghan system follows the inquisitorial rather than adversarial civil law model, and is also guided by Sharia law. The defense bar is relatively underdeveloped in Afghanistan and this imposes additional burdens on judges.

Hashimi completed his FJC visiting fellowship at the end of summer, but he is still hard at work. He is now the first Afghan candidate in the Visiting Scholars Program at Whittier Law School in Orange County, California, where he hopes to put the finishing touches on Afghanistan's first benchbook for judges. After completion, the benchbook will be reviewed by an advisory committee of experienced Afghan judges and, finally, be submitted to the Chief Justice of the Afghan Supreme Court for approval. 🗒️

PACER at 20 continued from page 1
cost." A dozen courts signed up for the pilot Public Access to Court Electronic Records (PACER) system.

It began as an electronic bulletin board system with dial-in modems. The U.S. Party / Case Index was added in 1997, allowing national searches through an index for district, bankruptcy, and appellate court cases. In 1998, PACER began moving to a web environment, so anyone with Internet access could view court cases.

From a dozen participating courts, PACER has grown to include all bankruptcy, district, and appellate courts. From 9,000 registered user accounts in 1994, PACER grew to 900,000 registered accounts by 2008. This fiscal year alone, PACER added 134,000 new users.

The court of Bankruptcy Judge J. Rich Leonard in the Eastern District of North Carolina was one of the pilot PACER courts and he became a guiding member of the Electronic Public Access Working Group. "When I came on the bench in the early 1990s, we were overwhelmed with

a spiraling caseload," Leonard said. "We had to use technology to work more efficiently. PACER does that."

One of PACER's immediate effects, according to Leonard, was the disappearance of lines of stringers hired by companies to come to the court and write out filings by hand. PACER leveled the playing field, giving large and small, rural and urban law firms the same electronic access to court files. And it's not just proximity, it's reliability.

"Today, high PACER use is actually a tribute to our system," Leonard said. The reason? "Even though we give attorneys a free copy of the documents in their cases, we found they prefer to rely on the integrity of our files, rather than download and create their own files to work from. They continue to access PACER to look at our docket sheet because the most recent and most accurate information is there."

One of the most far-reaching changes for PACER came in 1991, when Congress passed legislation requiring the Judiciary to set a schedule of "reasonable fees" with all collected fees "to be deposited as offsetting collections to the Judiciary Automation Fund." PACER became the only such self-funded program of its kind in the federal government. In 1997, Congress passed legislation that allowed the Judiciary to use those fees to enhance availability of electronic information.

"We knew that unless we built on a sustainable financing basis, we'd never be able to keep PACER alive," said Leonard. "What PACER receives in fees is plowed back into the system and into other public access initiatives. And we've kept fees reasonable. Since PACER moved to the Internet, fees haven't really fluctuated far

See **PACER** on page 9

The PACER Service Center: The Backstory


In the early 1990s a centralized registration, billing, and technical support center for electronic access to U.S. district, bankruptcy, and appellate court records was just a gleam in Chuck Vagner's eye. At the time Vagner was clerk of court for the Western District of Texas.

"Congress had just given its OK for the Judiciary to charge fees to access automated court records," recalls Vagner. "And the Electronic Public Access pilot program was up and growth was anticipated. I was asked by the AO to look at how to provide support, billing, and register users, for the program. I called my very competent staff together, shut the door, and brainstormed. In the end, we suggested a national PACER service center. We thought attorneys should be able to go to one place and use one ID. Service and billing also would be centralized."

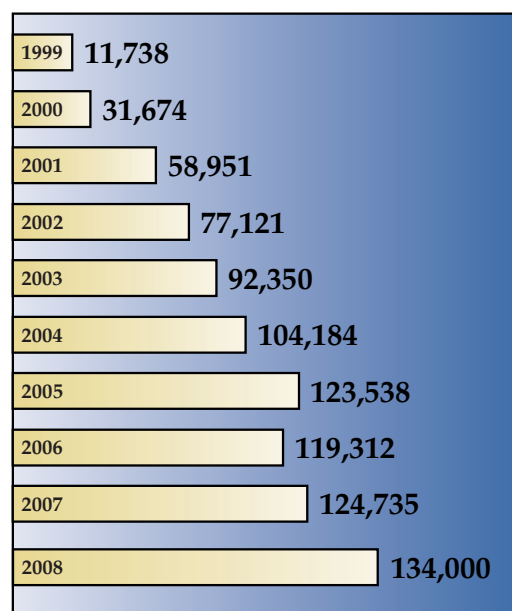
To develop the service center, Vagner and his staff made use of some of the software programs underpinning the Central Violations Bureau (CVB), where tickets issued for violations on federal property are sent for processing. They then developed a whole lot more.

"We got the go-ahead to try it in our own bankruptcy court," said Vagner. "When that succeeded, we expanded to 5 or 6 more bankruptcy courts, and it did extraordinarily well. Then we expanded to the district courts. Courts signed on as we became more and more successful."

With the center growing fast, Vagner posted a job opening for someone to manage the customer service representatives and system administrators; Ted Willmann applied. He's been with the PACER Service Center ever since—and he added the CVB to his responsibilities along the way. Today Willmann works with a staff of 20 at the PACER Service Center. They handle billing, receipts, and respond to phone calls for the nationwide system.

"It just proves," said Vagner, "you can do anything with good staff and good ideas." 

New PACER Customers By Year 1999-2008



Courthouses continued from page 1

harsh climate of West Texas, and the specific mission of the occupants of the courthouse."

The jury noted how the project "incorporates security, climatic mitigation strategies, and local materials in a design solution that is grounded in the surrounding landscape. The dry-laid local stone walls, simple landmark entry rotunda, horizontally oriented wood detailing, and clear organization of the building components around an exterior courtyard all contribute to this relationship with the site." The design uses a courtyard and an exterior covered walkway as the primary circulation and organizational device, instead of an air-conditioned interior route.

Bill Putnicki, clerk of court for the Western District of Texas, and Facilities Design Project Manager Sonia Hogeland are both pleased with how well the building relates to the local area.

"The building is not your traditional courthouse, yet it fits right into the Alpine, Texas, esthetic," said Hogeland. "They used a lot of indigenous materials and the stone looks just like a mountain a half mile from the site."



Richard Sheppard Arnold U.S. Courthouse in Little Rock, Arkansas

Putnicki is happy to finally have room for judges, staff, and probation and pretrial services offices in one building. Previously, they had been spread between several buildings with a magistrate judge's chambers in a shopping center. The court, according to Putnicki, already has a high volume of drug and immigration cases, and will probably see more cases as the local U.S. Attorneys office, the Border Patrol, ICE, and DEA move additional personnel into the area.

Wheeling Federal Building and U.S. District Courthouse Wheeling, West Virginia Northern District of West Virginia

Photo by Anton Grassl/Esto Photographics, Inc.



Wheeling Federal Building in Wheeling, West Virginia

nized interior (with its clear distinction of public and secure circulation), to the layered transparency of the atriums façade. . . . The atrium provides the city and the building occupants with an urban showcase, framing views of the activities within, while elegantly deferring to the traditional vocabulary of its surroundings. . . . This submission clearly communicates how the skillful integration of three existing buildings can revitalize an entire city block."

"The jury's statement rightly recognizes how well the courthouse's atrium complements the original building dating from 1953," said Judge Frederick P. Stamp, Jr., who headed the courthouse construction project. "The atrium is a great addition to the downtown area and gives ready access to the congressional offices, and our probation office and our clerk's office. For the first time, we have a jury assembly room, located off the atrium, that is also an excellent space for meetings and receptions. And after many years, our U.S. Attorneys office has returned to the courthouse. There's also space in the atrium for art exhibits and we're currently showcasing the works of local artists with disabilities."

Stamp adds, "Great credit goes not only to the architects and contractors, but also to everyone in the courthouse

Architect: Goody Clancy
Associate Architect: HLM Design
Contractor: Dick Corporation

"This existing judicial complex of three disparate 20th century buildings has been reenergized by the addition of a four-story connective atrium," the jury said. They were particularly impressed with "the rigor evident in the solution, from the reorga-

who gave countless hours working with the AO and the GSA, and contributing ideas to the process.”

Richard Sheppard Arnold
U.S. Courthouse Annex
Little Rock, Arkansas
Eastern District of Arkansas

Photo by Timothy Hursley

Architect: WER RTKL, A Joint Venture
General Contractor: Caddell Construction Company, Inc.



Interior of the U.S. Courthouse, Little Rock, Arkansas

“The building draws people to it,” said Clerk of Court James McCormack, “and puts us back into the town square as the first federal building on the government corridor leading to the capitol.”

According to the architect’s statement, the project was originally envisioned as an expansion of the existing courthouse; however, after reconsideration and recommendations from the government design team, the project became an independent addition to the courthouse. The addition sits on a newly acquired parcel, creating sightlines from the prominent Broadway and Capitol inter-

section to the new complex. A landscaped public plaza running parallel to the project showcases a striking atrium entrance that provides a new main entry and connects the addition to the courthouse.

“They did a truly remarkable job,” said McCormack. “The exterior historic wall of one building is the interior wall of our atrium and our bridge to our past. People like the experience of being in our building. They bring their lunch to the atrium and sit and watch the activity. That’s the way it’s supposed to be.”

George C. Young U.S. Courthouse and Federal Building Annex

Orlando, Florida

Middle District of Florida

Photos by Peter Aaron/Esto Photographics, Inc.

Architect: Leers Weinzapfel Associates

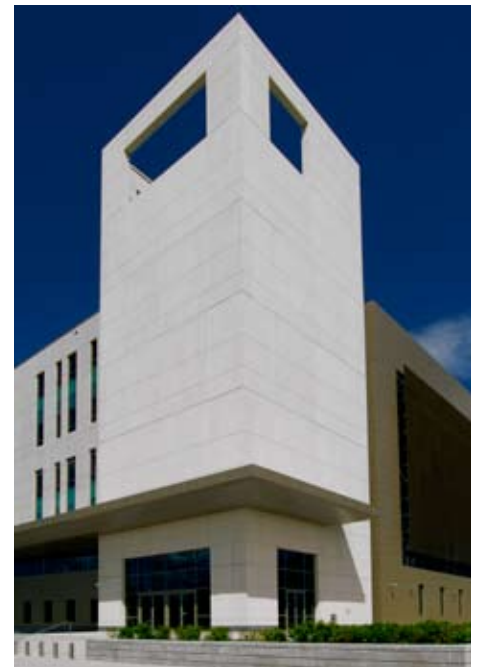
Associate Architect: HLM Design-Heery International Inc.
General Contractor: Hansel Phelps Construction Company

According to the architect’s statement, the new courthouse is a six-story structure with its entry at the corner of two main streets, “providing a landmark

presence in the downtown area and linking two sides of a city divided by an elevated highway.

Four courtrooms on each floor overlook a five-story atrium. Beyond the courtroom zone, the chambers are configured as pavilions around light terraces that bring daylight into the courtrooms.”

Chief Judge Anne C. Conway says that once construction started, work on the new courthouse was a model



Entrance of the U.S. Courthouse and Federal Building, Orlando, Florida

of teamwork. “We held monthly meetings once construction started,” she said. “And we worked closely with the architect, the contractor, our GSA project manager, and the U.S. Marshals Service representative. The new courthouse has lots of nice features and a beautiful public space that gets a lot of use. As the architect noted, the new courthouse ‘re-establishes the city block and creates a welcoming and dignified presence for the court within the city and surrounding neighborhoods.’”



Interior of the U.S. Courthouse Building, Orlando, Florida

A Safe, Secure Means of Investing? Try CRIS.

Who didn't have at least a moment of anxiety as the Dow Jones tanked in recent weeks? Who didn't look with some trepidation at downsized 401(k)s? Not Mike Milby, clerk of court in the Southern District of Texas, and 25 of his fellow clerks. Milby oversees a nearly \$3 billion fund for the Judiciary that sailed through the downturn. "We didn't have to worry about our money," said Milby. Here's why.

Back in the mid-1980s, Texas was in the midst of its own financial crisis, complete with the largest number of bank failures since the Great Depression. The clerk of court in the Southern District of Texas, like clerks in federal courts nationwide, served as the custodian for monies belonging to litigants, witnesses, and other participants during litigation, opening individual accounts at local banks for every case. For example, if an insurance company knew it would owe money to people in a case, the money would be held in an interest-bearing account until the case was decided and the parties received their money. The clerk of court would be responsible for the proper collection, maintenance, accounting, and disbursement of all monies.

At the time, Milby was a young financial administrator in the Southern District of Texas. "Enough banks were failing," he recounts, "that our clerk of court Jesse Clark said he was having trouble sleeping at night, worrying about the safety and accessibility of our accounts."

That's when Milby came up with the idea of the Court Registry Investment System (CRIS). Essentially, CRIS pools all the money scattered among individual accounts and deposits it in the U.S. Treasury, buying Treasury bills, without depositing registry funds at a private financial institution.

"Pooling the money means we always have money to disburse when it's needed, we don't incur credit risk because the money is in Treasury bills, and we minimize interest rate risk by staggering the maturities," said Milby. "Of course, permission for this unique arrangement had to be obtained from the Treasury and the Federal Reserve Board of Governors. The Treasury and the AO helped us set up the whole process. It was an exciting time for everyone involved."

The Federal Reserve Board and U.S. Treasury agreed to set up an account for the court. In turn, the Southern District of Texas managed its own funds and those of other courts willing to deposit funds with them. Twenty-five federal courts currently participate.

"Every week, they send money and they take money out," said Milby. "From \$10 in a single case to \$500 million, we track the earnings and the registry fees and give them a weekly report."

"Because registry funds managed through CRIS never leave the Treasury, it is the safest, most secure means of investing these monies," said George Schafer, assistant director of the Office of Finance and Budget at the Administrative Office. "Considering the current volatility of the financial market, if I were a clerk of court held responsible for these registry funds, I would jump at the chance to join CRIS."

Even Treasury bills haven't been immune to the recent financial crisis. At one point, interest on the bills was at zero percent. Was Milby concerned? "We didn't invest that one day," he said, "and by the next day interest was back up. We were never at risk."

However, a recent event will impact how courts will be able to

invest their registry funds. Enactment of the Judicial Administration and Technical Amendments Act of 2008 (Pub. L. No. 110-406) in October improves the courts' ability to manage their registry funds, broadening investment options and offering an improved procedure for investing Treasury securities. The Act gives the AO Director authority to participate in the Federal Investments Program, managed by the Treasury Department, which has on-line transaction capabilities. There are no transaction fees, transactions are posted daily instead of weekly, and a wider range of Treasury securities are available than on the secondary market. Because it is unlikely the Treasury Department would be willing to deal individually with 180 district and bankruptcy clerks, the AO and the CRIS monitoring group has started to analyze the different implementation options and will develop policies and procedures, rules and regulations governing the program. This group's recommendations will be vetted through the advisory process before being implemented.

Clerks who wish to discuss whether joining CRIS is right for them should contact Mike Milby at 713-250-5400. 

Data Show Majority of All Crack Cocaine Resentencing Motions Granted

A preliminary report released by the U.S. Sentencing Commission (USSC) shows that since March 2008 federal judges have granted 10,815 or 71.5 percent of the 15,126 applications for sentence reductions as allowed by the retroactive application of crack cocaine sentencing guideline amendments. On average, the result was a reduction of 24 months, or 17 percent, in an offender's sentence.

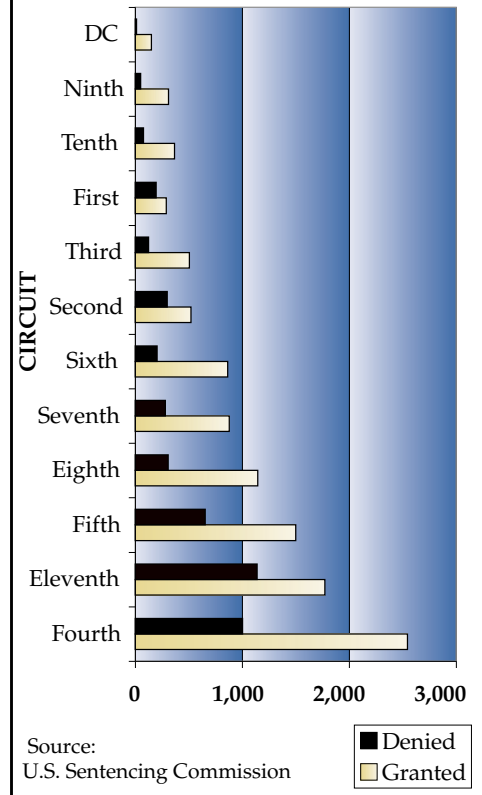
In 65 percent of the 4,311 denied motions, the courts determined that the offender was ineligible for a reduced sentence due to one of several factors, such as a mandatory minimum sentence that controlled the sentence, the offender's status as a career offender, or because the quantity of crack cocaine involved in the case was very large. In another 11 percent of the reasons for denials, either the offense did not involve crack cocaine or the sentence was determined by a non-drug guideline. In 14.5 percent of the cases, the court denied the motion because the offender had benefited from a departure or variance at the time he or she

was sentenced, to protect the public, because of other § 3553(a) sentencing factors, or because of post-sentencing or post-conviction conduct. A reason for denial could not be determined from the court documents in 9.5 percent of the cases where the motion was denied.

The USSC released its preliminary crack cocaine retroactivity data report in October 2008, with updated information on court decisions considering motions to reduce the length of imprisonment for certain offenders convicted prior to November 1, 2007 of offenses involving crack cocaine. The data was collected from March 3 through August 26, 2008.

In May 2007, the USSC submitted to Congress an amendment to the U.S. Sentencing Guidelines, resulting in a downward adjustment by two base offense levels for crack cocaine offenses. The amendment became effective November 1, 2007. In December 2007, the USSC made the decision to apply those guidelines retroactively, effective March 3, 2008.

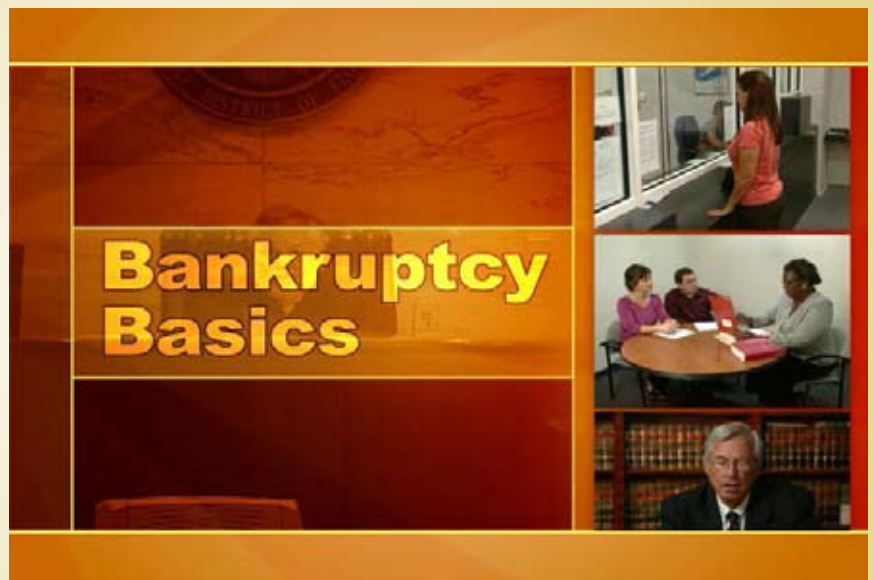
Geographical Distribution of Application of Retroactive Crack Cocaine Amendment by Judicial Circuit



As a result, it was estimated that more than 20,000 inmates would be
See Cocaine on page 9

Web Video Explains the Basics of Bankruptcy

A new video on the Judiciary's Webpage explains the basics of bankruptcy for potential filers. The video presents segments on the types of bankruptcy, the relief bankruptcy may offer, how to file for bankruptcy, how a bankruptcy case moves through the court, and how to find legal help. To take a look, visit www.uscourts.gov/video/bankruptcybasics/bankruptcyBasics.cfm.



Appointed: Michael M. Anello, as U.S. District Judge, U.S. District Court for the Southern District of California, October 10.

Appointed: Christine M. Arguello, as U.S. District Judge, U.S. District Court for the District of Colorado, October 21.

Appointed: Philip A. Brimmer, as U.S. District Judge, U.S. District Court for the District of Colorado, October 14.

Appointed: Eric F. Melgren, as U.S. District Judge, U.S. District Court for the District of Kansas, October 9.

Appointed: Joel H. Slomsky, as U.S. District Judge, U.S. District Court for the Eastern District of Pennsylvania, October 8.

Appointed: Anthony John Trenga, as U.S. District Judge, U.S. District Court for the Eastern District of Virginia, October 15.

Appointed: Clark Waddoups, as U.S. District Judge, U.S. District Court for the District of Utah, October 23.

Appointed: Ronald E. Bush, as U.S. Magistrate Judge, U.S. District Court for the District of Idaho, October 1.

Appointed: Paige J. Gossett, as U.S. Magistrate Judge, U.S. District Court for the District of South Carolina, October 24.

Appointed: J. Scott Hacker, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Texas, October 17.

Appointed: Debra McVicker Lynch, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Indiana, October 24.

Senior Status: U.S. District Judge Nina Gershon, U.S. District Court for the Eastern District of New York, October 16.

Senior Status: U.S. District Judge James Maxwell Moody, U.S. District Court for the Eastern District of Arkansas, October 1.

Senior Status: U.S. District Judge William R. Wilson, Jr., U.S. District Court for the Eastern District of Arkansas, October 1.

Elevated: U.S. District Judge Sarah S. Vance, to Chief Judge, U.S. District Court for the Eastern District of Louisiana, succeeding U.S. District Judge Helen G. Berrigan, October 1.

Retired: U.S. Court of Appeals Judge William W. Wilkins, U.S. Court of Appeals for the Fourth Circuit, October 6.

Retired: U.S. District Judge James T. Giles, U.S. District Court for the Eastern District of Pennsylvania, October 3.

Resigned: Chief U.S. District Judge Edward W. Nottingham, U.S. District Court for the District of Colorado, October 21.

Resigned: U.S. District Judge George P. Schiavelli, U.S. District Court for the Central District of California, October 5.

Resigned: U.S. Magistrate Judge Adriana Arce-Flores, U.S. District Court for the Southern District of Texas, October 9.

Deceased: U.S. Senior District Judge Joe Eaton, U.S. District Court for the Southern District of Florida, September 28.

Deceased: U.S. Senior District Judge Barron P. McCune, U.S. District Court for the Western District of Pennsylvania, September 10.

Deceased: U.S. Senior District Judge Howard G. Munson, U.S. District Court for the Northern District of New York, October 5.

THE THIRD BRANCH

Published monthly by the
Administrative Office of the U.S. Courts
Office of Public Affairs
One Columbus Circle, N.E.
Washington, D.C. 20544
(202) 502-2600

Visit our Internet site at
www.uscourts.gov

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JUDICIAL BOXSCORE

As of November 1, 2008

Courts of Appeals	
Vacancies	12
Nominees	10

District Courts	
Vacancies	25
Nominees	16

Courts with "Judicial Emergencies"	14
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Up-to-date information on judicial vacancies is available at <http://www.uscourts.gov/judicialvac.html>

PACER continued from page 3

from 7 cents a page. [They are now at 8 cents per page.] And that's still less expensive than what it costs to copy files at the court."

"The fees," agrees Mary Stickney, "allowed the Judiciary to build a national PACER program." Stickney was chief of the Administrative Office's EPA program from 1997 to 2008. In turn, PACER fees allowed the growth of programs and sites that increased public access to the courts, such as the Bankruptcy Noticing Center, the Victims Notification System, the Case Management/Electronic Case Files (CM/ECF) system, the Judiciary's public Website, and the advancement of courtroom technology.

"User groups around the country give PACER raves," said Leonard. "When they ask for more, we try to be responsive. Users asked why they should pay for a 100-page document when they only want to read two pages, so we placed a cap on fees. Users never pay more than \$2.40 for a download of a single document. If your annual charges for pages viewed are less than \$10, there's no charge. That's over 100 pages free. And if you need access and can't pay, policy permits indigent user exemptions."

Ted Willmann has run the PACER customer service center in San Antonio, Texas since the beginning. [See sidebar on page 3]. This fiscal year, the center responded to approximately 135,000 calls and 30,000 customer e-mails.

"We're adding 2,000 to 3,000 registered accounts a week," said Willmann. "The biggest jump in PACER growth was when we went from dial-up to the Web-based system. You practically needed to be a computer expert to do dial-up. Web is very intuitive. If you can surf the Internet, you can use PACER. That's when the explosive growth started."

In 2004, the Judicial Conference determined that electronic transcripts of proceedings should be available on

the Internet when courts make other electronic documents available. "That closed the loop," said Stickney. "Now the entire case record is on PACER."


The latest enhancement to the PACER system is the availability of digital audio recordings of court proceedings. Five pilot courts make some digital audio recordings available through the CM/ECF system, accessible through PACER. Not surprisingly, Leonard's court is leading the pilot program.

"It's the next level of transparency," he said. "And its potential is in opening up the judicial process to the public. I thought it was interesting that one local paper is picking up hearings and loading them to its Website. I know attorneys who load them to their MP3 players. This could be the antidote to mainstream media's declining coverage of the courts."

"The digital audio project is a key part of the future," agreed Michel Ishakian, the AO's new EPA chief. "And we are focusing on what needs to be done to ensure success on a national scale, including identifying

best practices and ironing out any technical problems. We have to make sure we have the necessary policies and infrastructure in place, along with internal controls."

The program's future, according to Ishakian, really belongs to the public. This will be determined through an assessment of the program's services, an initiative endorsed by the EPA working group, due to kick off in early 2009. The assessment will include focus groups and survey the courts, litigants, attorneys, the media, and bulk data collectors—the people who use PACER.

For Leonard, who watched PACER's first toddling steps, these are rewarding days. "I've been involved with the federal courts for 30 years, and I'm proudest of this program," he said. "I don't know of another national or state system that offers the access that PACER does." 

For more on PACER, including how to register to use the service, visit our Website at <http://pacer.psc.uscourts.gov/>.


Cocaine continued from page 7

eligible for shorter prison sentences. The October report provides information on all cases reported to the USSC in which the court considered a motion to reduce a sentence under 18 U.S.C. section 3582(c)(2) for an offender convicted of an offense involving crack cocaine.

The majority of granted motions, 80.2 percent, originated with defendants. None were submitted by the Bureau of Prisons, and 19.8 percent came from the courts. Of the offenders who were considered for sentence reduction, 69.1 percent previously received sentences within the relevant guideline range, 30.6 percent received sentences below the guideline range, and the rest were above the range. Offenders whose motions to receive a reduction in

sentence were granted, were serving an average sentence of 136 months, which subsequently was reduced by an average of 24 months.

The USSC preliminary report cautions about drawing conclusions based on the data, "as the judicial districts are employing various methods to prioritize the review of these motions. . . . The data the Commission has received to date concerning cases in which the motion for a sentence reduction was denied may not be representative of the decisions that ultimately may be made in any one district or the nation as a whole."

The report is available on-line at www.ussc.gov/USSC_Crack_Cocaine_Retroactivity_Data_Report_17_September_08.pdf. 

An Interview with ABA President H. Thomas Wells Jr.

H. Thomas Wells Jr., a partner and founding member at Maynard, Cooper & Gale, P.C., in Birmingham, Ala., is president of the American Bar Association. Wells began his one-year term as president in 2008. Wells has served in the ABA's policy-making House of Delegates since 1991 and was chair of the ABA House of Delegates from 2002-2004. He is a former chair of the ABA Section of Litigation and is co-chair of the ABA's Special Committee on Disaster Response. He also has been a member of the ABA's Commission on the American Jury and the ABA Commission on the Future of the Legal Profession.

Q: We tend to believe we live in a country where the rule of law prevails. But you see challenges. What imperils the rule of law in the United States? And what can be done about it?

A: The rule of law has its challenges everywhere in the world. Again, we have to remember it's the rule of law and not the law of rulers. In the United States, we have upheld the rule of law with checks and balances and three branches of government and quite frankly with a strong judiciary that has been able to hold our government accountable to the rule of law.

I have seen the effects of a less robust rule of law. I attended the World Justice Forum in Vienna last year for the World Justice Project as ABA President Elect. We had not just lawyers but all other disciplines from all over the world convening and talking about the rule of law. There were some places where it is much more challenging than in the U.S. But in some respects I think they understand the importance of the rule of law more than Americans because we take it for granted.

At our Board of Governors meeting last year in Colorado Springs, we invited Admiral Timothy J. Keating, Commander, U.S. Pacific Command, and he entertained questions. One of the board members asked a very interesting question: If there was one thing you could have more of, what would it be? Everyone expected Admiral Keating to say, five more attack carriers or something along those lines. His answer was a very interesting one: rule of law. He said if we could have more rule of law in the world we wouldn't have to send our sons and daughters to try to support the rule of law around the world. I thought that was an extremely insightful comment.

Q: You've recommended bipartisan judicial commissions to assist in the selection of candidates to the federal bench. What would they replace, and how would these commissions work?

A: Clearly, federal judges serve for life and are going to make decisions throughout their careers that are going to affect the rights of millions of Americans. So selecting the best people to fill these positions is critical to sustaining fair and impartial courts, and upholding the American ideals of justice and equal treatment under the law. Unfortunately, the nomination and confirmation process of federal judges has become somewhat of a political spectacle. At times it appears to be a tug of war over political ideology, which may hold up the appointment, create controversy, and be a threat to fair and impartial courts. When Congress and the President are fighting over politics, we end up with more court vacancies. We have caseloads backing up, and the vital



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work of the federal courts is not being done as quickly as it would be if we had a full complement of federal judges.

We certainly don't believe the idea of citizen commissions to suggest nominees to the federal court is any kind of panacea for the political tug of war, but we do believe and experience has shown, particularly in the eight states that use these judicial nominating commissions, that it can go a long way to take some of the rancor out of the system.

Our idea would be to have commissions made up of citizens—which would include lawyers but not necessarily be a majority of lawyers, and people from both political parties—to vet people for federal judgeships. They would recommend X number of people to their Senators, who then either send the list to the White House, add to it, or send some smaller number.

In one form or another, this process is already in place in eight states. We are raising the issues with Senators as we go to Capitol Hill.

We are asking the new President to consider setting up a parallel system for federal appellate court nominees. Certainly if the White House lets it be known that the President will more favorably consider someone who came up through the commission process, then perhaps more of the Senators would agree to set up these bipartisan judicial nominating commissions.

Q: The Judicial Conference identifies judicial emergencies in courts of appeals and districts where there are long-standing judicial vacancies. How do judicial vacancies affect attorneys and litigants?

A: It's not only what I hear from ABA members: I'm a litigator myself. It's a problem particularly to get civil cases to trial in federal courts, because of the huge influx of federal criminal cases and the Speedy Trial Act, of course, mandates that criminal cases go faster. So, that problem is evident even in districts that are fully staffed. It is exacerbated when there is an unfilled judicial vacancy.

Q: If you had one piece of advice on matters that impact the legal community to offer the incoming White House Administration, what would it be?

A: In the October issue of the *ABA Journal*, Thomas Susman of the ABA's Government Affairs Office and I jointly signed a letter to the next President—we intentionally did it before we knew who the next President would be—making several suggestions on things that he could do immediately after his inauguration to improve, not only the legal community but indeed the rule of law.

We intentionally tried to look at

things that would not require legislation: judicial nominations and confirmations; doing something with our broken immigration system; rejecting the use of Presidential signing statements; and protecting the attorney-client privilege. As you know we've been working for quite awhile with the Justice Department on their policies of waiver of privilege in corporate criminal investigations. We managed to get DOJ to change their policy. The problem now is that policy only applies to the Justice Department and not yet to the FCC, the EPA, HUD and other agencies with similar policies. We believe the next administration, by Executive Order, could correct that problem in all agencies.

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Q: In February 2007, the ABA released its new Model Code on Judicial Conduct. How has it been received at the state level? Are there significant differences between the ABA Code of Conduct and the Judiciary's own Code of Conduct for United States Judges?

A: At the state level, Hawaii and Indiana have adopted revised judicial codes that are based upon the ABA 2007 Model Code. Eleven other states have issued proposed revisions to their state codes very similar or identical to the ABA Model

Code. Twenty-one other states have committees that are reviewing their judicial codes.

The ABA Center for Professional Responsibility has a policy implementation committee, chaired by Maryland State Court Judge Barbara Howe, that is working on an ongoing basis with states to encourage all states to review their current judicial codes.


The federal judges' Code of Conduct is very similar to the ABA Model Code. Nearly all the provisions in the federal code that differ from the provisions in the ABA Model Code are ones that are either dictated by federal statutes or case law or by the unique characteristics of federal courts. For example, because federal judges are appointed, you don't need any provisions dealing with the election of judges. Another difference is in the disqualification for economic interests provisions. Under 2.11 of the ABA Model Code, a judge is disqualified if he or she has an economic interest in or is a party to the proceedings. The ABA Model Code defines economic interest as ownership of more than a de minimus amount. The federal Code of Conduct has a more restrictive provision and has a "however small" standard, meaning any ownership of stock in a party would automatically require a federal judge disqualification. So, on a substantive basis, that's probably the biggest difference.

Q: Pay restoration for judges and pay compression at the executive level are ongoing issues for the federal Judiciary, but are these issues that concern the majority of your ABA membership? Does it matter that federal judges are paid less than many law professors or law firm associates?

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A: It clearly does. Our former chief judge here in the Northern District of Alabama, U. W. Clemon, has just decided to leave the federal bench. He was on senior status and obviously could have stayed for life, but left primarily because he said the pay was not commensurate with the work, even at the senior level. So he's joining a law firm. Former Chief Judge Sam Pointer did the same thing several years ago. That meant that at least here in Birmingham we lost two of our most senior and most respected

federal jurists because they simply weren't being paid enough.

Clearly, if you become judge, whether at the state or federal level, you have to be doing it not for the money but to serve the public. But at the same time, you have to support your family. If you're going to do it at a younger age you may have to put children through college, and it is just very difficult to do at the current pay scale that we have for federal judges. That is why this is one of the issues at the very top of the ABA's lobbying agenda with Congress. 

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